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# CONSUMER FINANCE CLASS ACTIONS & LITIGATION

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*Sessions include:*

- The CFPB and the Consumer Finance Industry
- Supreme Court Roundup – *Campbell-Ewald, Tyson Foods, and Spokeo*
- Class Action Litigation and Settlement Trends
- TCPA Trends
- FDCPA and FCRA Litigation and Enforcement Actions
- Residential Mortgage Litigation... and More

*Judicial perspectives from:*



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Consumer financial services companies are facing *unprecedented regulatory and enforcement scrutiny, mounting litigation, and costly class actions*, and there is no sign of change coming anytime soon. That is why it is essential that in-house and outside counsel have a mastery of new class action litigation and settlement trends, emerging theories of liability, the latest enforcement actions and regulatory initiatives, and the most effective defense and settlement strategies.

It is with this in mind that American Conference Institute has developed its 26<sup>th</sup> **National Conference on Consumer Finance Class Actions & Litigation**. We have assembled an unparalleled faculty of federal and state regulatory and enforcement officials, senior in-house counsel, renowned federal and state judges, and leading outside counsel who will provide you with expert advice, critical insights, and comprehensive updates on:

- The latest **enforcement actions and initiatives from the CFPB** and other federal and state agencies, and their impact on the consumer finance industry
- New and emerging strategies for defending against claims, class actions, and government enforcement actions relating to **TCPA, FCRA, and FDCPA**
- Alternative ways to moot a class action in the wake of *Campbell-Ewald*, evaluating the impact of *Tyson Foods*, assessing the status of *Spokeo*, and adapting your consumer finance class action and litigation strategies in anticipation of forthcoming supreme court decisions
- Consumer finance **class action litigation and settlement trends**, as well as new and emerging **procedural considerations**
- Managing and defending against **residential mortgage and foreclosure litigation**
- **Judicial perspectives** on class certification, arbitration, settlement considerations, bankruptcy litigation, e-discovery, and more
- Managing and defending against **fair lending claims**, including claims of discriminatory, predatory, and abusive lending
- **The borrower's perspective**: insights from the plaintiffs' bar and consumer advocates

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- » In-house counsel from
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  - Loan servicers and purchasers
  - Student loan lenders
  - Auto lenders
  - Credit card issuers
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C5 Group, comprising American Conference Institute, The Canadian Institute and C5 in Europe, will unite under one central brand image, appropriately a globe. See how bringing together the power of people and the power of information can accelerate your growth and success.

Our new brand look and language will be fully revealed soon. Stay tuned for more exciting changes.

# Day One: Thursday, July 28, 2016

7:30 / Registration and Continental Breakfast

8:00

## Co-Chairs' Opening Remarks



**Thomas M. Hefferon**  
Goodwin Procter LLP



**Scott M. Pearson**  
Ballard Spahr LLP

8:05

## In-House Roundtables: How Corporate Counsel Are Managing Consumer Finance Claims/Class Actions, Compliance Challenges, and Enforcement Actions and Examinations, Selecting and Working with Outside Counsel to Enhance the Client-Attorney Relationship, and Achieving Efficiencies with Reduced Budgets and Smaller Staffs

### Panel 1 | 8:05 – 9:20

**Sulejman F. Dizdarevic**  
Director and Senior Counsel  
[Discover Financial Services](#)

**Tim O'Brien**  
Assistant General Counsel  
[Capital One](#)

**Andrew Lusk**  
Senior Counsel  
[Quicken Loans, Inc.](#)

**Manuel P. Alvarez**  
General Counsel  
[Affirm, Inc.](#)  
*Former CFPB Enforcement Attorney*

**Brian Blake**  
Senior Counsel  
[MERSORP Holdings, Inc.](#)

**Renee Garcia**  
Senior Counsel  
[PNC Bank](#)

**Robert Lavet**  
General Counsel  
[SoFi](#)

### Panel 1 Moderator:



**Stuart M. Richter**  
[Katten Muchin Rosenman LLP](#)

### Panel 2 | 9:20 – 10:35

**Nitish Pandey**  
SVP, Chief Legal Officer, Personal & Commercial, U.S.  
[BMO Financial Group](#)

**Germán A. Salazar**  
Vice President, General Counsel  
[AmeriFirst Financial, Inc.](#)

**Kelli S. Lott**  
First Vice President and Senior Counsel  
[SunTrust Bank](#)

**Linda Dubnow**  
Director, Litigation  
[TransUnion, LLC](#)

**James M. Wortman**  
SVP, Deputy General Counsel  
[Caliber Home Loans, Inc.](#)

**David Curcio**  
Director and Senior Counsel  
[Discover Financial Services](#)

**Paul Jones**  
General Counsel  
[Skopos Financial Group LLC](#)

### Panel 2 Moderator:



**Rob Mowrey**  
[Locke Lord LLP](#)

10:35 / Networking and Refreshment Break

10:45

## Regulatory Enforcement and Examination Roundtable: The View from Federal and State Agencies and Attorneys General on New and Emerging Initiatives, Enforcement Actions, Examination Procedures, and Investigations

**David A. O'Toole**  
Senior Staff Attorney  
[Federal Trade Commission](#)

**Richard K. Hayes**  
Deputy Chief, Civil Division  
[U.S. Attorney's Office, Eastern District of New York](#)

**Tom James**  
Senior Assistant Attorney General  
Consumer Counsel – Consumer Fraud Bureau  
[Office of the Illinois Attorney General](#)

**R. Stephen Stigall**  
Attorney-in-Charge  
Camden Branch Office  
[U.S. Attorney's Office, District of New Jersey](#)

**Lara A. Sutherlin**  
Assistant Attorney General  
Consumer Protection Unit  
[Wisconsin Department of Justice](#)

**Richard L. Bischoff**  
Assistant Attorney General  
Consumer Protection Division  
[Office of the Texas Attorney General](#)

**Bryan Greene**  
General Deputy Assistant Secretary of the Office of  
Fair Housing and Equal Opportunity  
[U.S. Department of Housing and Urban Development](#)

**Jedd Bellman**  
Assistant Commissioner  
Office of the Commissioner of Financial Regulation  
[Maryland Department of Labor, Licensing & Regulation](#)

**Moderator:**



**Michael E. Gordon**  
[Wilmer Cutler Pickering Hale and Dorr LLP](#)  
*Former Senior Counselor to the Director of the CFPB*

- Assessing the types of investigations and actions that are being brought against financial institutions
- What are the biggest areas of concern for federal agencies and state attorneys general right now?
- Pitfalls to avoid when working with federal agencies and state attorneys general
- What to expect during an examination
- Regulatory enforcement and examination perspectives
- How will the CFPB, the FTC, and other federal agencies coordinate investigations, enforcement actions, and settlements with state agencies and attorneys general?
- The impact of eased preemption under Dodd-Frank and where financial institutions can expect changes
- Effectively responding to investigations

**12:05**

### Consumer Finance Class Action Litigation and Settlement Trends and New and Emerging Procedural Considerations: Certification, Class Ascertainability Issues, and Other Procedural Developments, New Cases, Emerging Theories of Liability, and Recent Developments in Settlement Strategies



**Gregory S. Korman**  
[Katten Muchin Rosenman LLP](#)



**Bryan A. Fratkin**  
[McGuireWoods LLP](#)



**Patrick J. Ivie**  
Executive Vice President  
[KCC](#)



**Marcel C. Duhamel**  
[Vorys, Sater, Seymour and Pease LLP](#)



**Simon A. Fleischmann**  
[Locke Lord LLP](#)

- Assessing the evolving landscape of class litigation
- Overview of recent noteworthy class action cases and settlements
- What is now required in order to obtain or defeat class certification?
- Issues relating to the ascertainability of class and class members
- Evaluating recent developments relating to Rule 23(b) class certifications
- Using expert testimony and data to make a direct challenge to a class certification
- Assessing the latest theories of liability and emerging defense strategies
- Class actions arising from federal and state activities, especially those of the CFPB and state attorneys general
- UDAP/UDAAP litigation and class actions
- Recent developments in class action law and their impact on consumer finance litigation
- New developments relating to jurisdiction and removal under CAFA

- The status of class action waivers and arbitration
- Settlement trends – what types of cases are likely to be settled now and in the near-term?
- Innovative and effective settlement strategies
- Strategic benefits of settling with a class representative
- Impact that insurance can have on settlement strategies
- Impact of recent 7<sup>th</sup> Circuit decisions on the class action landscape
- New hurdles in obtaining class settlement approvals, particularly in the 7<sup>th</sup> Circuit
- Strategies for defending consumer finance class actions in unfavorable jurisdictions
- Considerations for corporate counsel when facing a class action
- Managing and defending multiple cases simultaneously (individual claims, class actions, and regulatory and enforcement actions)

1:15 / Networking Luncheon for Speakers and Attendees

**2:15**

### The CFPB and the Consumer Finance Industry: Considerations and Lessons Learned from Recent CFPB Enforcement Actions, Including in the Areas of Cybersecurity and Data Privacy, Gauging the Impact of the Bureau's Position on Arbitration, Assessing its Expanded Use of UDAAP Provisions, and Evaluating the Bureau's Enhanced Oversight and Heightened Scrutiny of Financial Institutions and Nonbank 'Larger Participants', Including the Student Lending, Auto Lending, Marketplace Lending, and Installment Lending Industries



**Hunter Wiggins**  
[Jones Day](#)  
*Former Principal Deputy Enforcement Director at the CFPB*



**David R. Dugas**  
[McGlinchey Stafford PLLC](#)



**Eric J. Mogilnicki**  
[Covington & Burling LLP](#)



**Ori Lev**  
[Mayer Brown LLP](#)  
*Former Deputy Enforcement Director at the CFPB*



**Scott M. Pearson**  
[Ballard Spahr LLP](#)



**Rachel Rodman**  
[Arnold & Porter LLP](#)  
*Former Enforcement Attorney at the CFPB*

- Lessons learned from recent CFPB enforcement actions and emerging enforcement and investigation trends
- Takeaways from recent CFPB enforcement actions relating to cybersecurity and data privacy
- Assessing the CFPB's enhanced scrutiny of nonbank 'larger participants'
- Assessing the CFPB's priorities and initiatives
- Project Catalyst and its potential impact on innovation in financial services
- Assessing the CFPB's position on arbitration and what it means for the industry
- Preparing for and responding to CFPB investigations and examinations
- Responding to CIDs (Civil Investigative Demands)
- Trends in the CFPB's use of UDAAP claims as a broad enforcement tool and lessons learned from recent enforcement actions
- Assessing the definition of 'abusive' practices
- Addressing potential UDAAP concerns
- UDAAP and the payday lending industry
- Recent cases dealing with UDAAP
- Assessing coordination efforts between the CFPB and other federal and state agencies, including state AGs
- Rulemaking updates

- Impact of the CFPB's consumer complaints database on consumer finance litigation
- The CFPB and lender-placed insurance
- Attorney-client privilege and the CFPB

3:30 / Networking and Refreshment Break

**3:40**

**Residential Mortgages: Lender and Servicer Class Action, Litigation, Settlement, and Procedural Trends With Regard to Loan Mods, Lender-Placed Insurance, Duty of Care, and More; Latest Foreclosure Challenges Tied to Statutes of Limitation; Ongoing Impact of CFPB Mortgage Rules; and Best-in-Class Risk Management and Regulatory Practices**

 **Abe Chernin**  
Principal  
Cornerstone Research

 **Michael J. Steiner**  
Severson & Werson PC


 **Frank A. Hirsch, Jr.**  
Alston & Bird LLP

 **Stuart B. Wolfe**  
Wolfe & Wyman LLP

- Updates on recent enforcement actions and case law
- Residential mortgage class action and settlement trends
- Non-bank mortgage servicing litigation and enforcement actions
- Litigation relating to transfers of mortgage servicing rights
- Litigation arising from Trial Period Plans (TPPs) that fail to convert to permanent loan modifications
- Lender-placed insurance litigation
- Duty of care owed to borrower by loan servicers
- Recent activity under RESPA
- New developments relating to loss mitigation
- Ongoing impact of the CFPB's mortgage rules
- Developing best-in-class risk management and regulatory policies and practices
- Foreclosure challenges based on alleged statute of limitations lapses
- Auditing completed foreclosures and conducting foreclosure look-backs
- Attorney fees and related foreclosure filings
- New and emerging claims relating to standing in contested foreclosure cases
- Loan modifications and foreclosure
- Responding to challenges to foreclosures in non-judicial foreclosure states
- Handling borrower counterclaims in contested foreclosures
- Overcoming commonly raised defenses including TILA, SCRA, fraud, and rescission claims
- Preventing bankruptcy from becoming a tool used by borrowers to stall foreclosures
- GSE transfer tax litigation
- MERS litigation developments: Recording fee class actions
- RMBS litigation: Settlement trends

**4:50**

**Debt Collection and Credit Reporting Litigation and Enforcement Actions: Developing Effective Defense Strategies for New and Emerging Claims and Managing Government Enforcement Actions Arising From the FDCPA and the FCRA**

 **Dylan W. Howard**  
Baker, Donelson, Bearman,  
Caldwell & Berkowitz, PC

 **Geoffrey K. Milne**  
Hunt Leibert Jacobson, P.C.

 **Christy A. Ames**  
Stites & Harbison PLLC

- Trends in FDCPA litigation
- New and innovative FDCPA claims from the plaintiffs' bar – and how to defend against them
- Minimizing the risk of exposure to FDCPA claims
- Heightened scrutiny of potential FDCPA violations
- Impact of CFPB rulemaking on debt collection litigation
- Preparing for and managing actions taken by state attorneys general and federal and state regulatory agencies relating to debt collection practices
- How debt collectors have adapted their internal compliance and auditing policies and procedures to minimize future litigation
- Understanding and making use of statistics and data related to debt collection litigation
- Strategies for calculating damages based on net worth
- Assessing the risks associated with sales of debt by creditors
- How clients are working with debt collectors to ensure proper oversight
- Chain of title issues
- Potential impact of the Supreme Court's decision as to whether a plaintiff asserting a claim under a statute providing for statutory damages (specifically, the FCRA) has standing to bring the case when the plaintiff has suffered no damages
- Impact of CFPB and FTC actions relating to the FCRA
- Trends in FCRA litigation
- Best practices for defending against FCRA claims and class actions
- Minimizing the risk of exposure to FCRA claims
- State claims and FCRA preemption

5:50 / Conference Adjourns

Cocktail Reception hosted by: **Katten Muchin Rosenman LLP**

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*Day Two:*

*Friday, July 29, 2016*

7:30 / Continental Breakfast

**8:00**

**Views from the Bench: Judicial Perspectives on Class Certification, Arbitration, the Evolution of the Law, Settlement Considerations, the Latest Plaintiff Theories, Emerging Defense Strategies, E-Discovery, Bankruptcy and Foreclosure Litigation, and More**

 **Hon. Nora Barry Fischer**  
U.S. Dist. Ct., W.D. Pa.

 **Hon. F.A. Gossett III**  
U.S. Dist. Ct., D. Neb.

 **Hon. Michael B. Kaplan**  
U.S. Bankr. Ct., D.N.J.

 **Hon. Clifton B. Newman**  
South Carolina Circuit Court

 **Hon. Sean W. McPartland**  
Sixth Judicial District of Iowa

**Moderator:**

 **Andrew K. Stutzman**  
Stradley Ronon Stevens & Young, LLP

9:40

## The Telephone Consumer Protection Act (TCPA): Litigation and Settlement Trends, New Plaintiff Theories, Emerging Defense Strategies, Class Action Certification Issues, and Staying Ahead of the Curve in the Face of Complex and Unclear Rules

**Christopher Bradley Schuelke**  
Assistant Attorney General  
Office of the Texas Attorney General



**Frank Springfield**  
Burr & Forman LLP



**Joseph J. Siprut**  
Siprut PC

**John C. Lynch**  
Troutman Sanders LLP

- Emerging trends and developments in TCPA litigation
- Settlement trends
- Compliance concerns, enforcement trends, and recent FCC guidance
- Evolving issues relating to consent and revocation of consent under the TCPA
- The latest on the definition of automated telephone dialing system (ATDS)
- Defense strategies for combatting the new wave of TCPA claims and class actions
- Certification issues relating to TCPA class actions
- Overcoming TCPA challenges and limiting TCPA exposure in the face of complex and unclear rules
- How technology can be used to minimize your exposure to TCPA claims
- Practical guidance for what lies ahead

10:55

## Supreme Court Roundup – *Campbell-Ewald*, *Tyson Foods*, *Spokeo* and Beyond: Exploring Alternative Avenues to Moot a Class Action in the Wake of *Campbell-Ewald*, Evaluating the Impact of *Tyson Foods*, Assessing the Status of *Spokeo*, and Adapting Your Consumer Finance Class Action and Litigation Strategies in Anticipation of Forthcoming Supreme Court Decisions

**Jeffrey D. Pilgrim**  
Pilgrim Christakis LLP



**Victoria R. Collado**  
Burke, Warren, MacKay & Serritella, P.C.

**Jennifer L. Gray**  
Greenberg Traurig, LLP

- Impact of *Campbell-Ewald* on class actions
- Reactions to *Campbell-Ewald*
- Assessing the possibility of mooting class actions through other channels that were left open by the decision
- Evaluating the impact of *Tyson Foods* on consumer finance class actions
- Assessing the status of *Spokeo*
- How the fallout from these three cases, and their application by other courts, will impact the class action landscape going forward
- Adapting your consumer finance class action and litigation strategies in anticipation of forthcoming supreme court decisions

1:00

## Fair Lending: Managing and Defending Against Claims of Discriminatory, Predatory, and Abusive Lending and Assessing the Status of 'Disparate Impact' in Lending Litigation and Enforcement

**Robin Nunn**  
Vice President, Senior  
Associate General Counsel  
Capital One



**Darren M. Welch**  
Skadden, Arps, Slate,  
Meagher & Flom LLP

**Thomas M. Hefferon**  
Goodwin Procter LLP



**Therese G. Franzén**  
Franzén and Salzano, P.C.

- Assessing recent cases and actions
- How state and federal agencies are approaching fair lending issues
- Enhanced scrutiny of fair lending issues by the CFPB
- Assessing the status of 'disparate impact' in lending litigation and enforcement
- Impact of the Supreme Court's decision as to whether disparate impact claims are cognizable under the FHA
- Defending against the latest claims alleging fair lending violations
- Statistical modeling of decision making/disparate impact analyses
- Maintaining privilege
- Negotiating successful resolutions
- Public relations concerns
- Settlement considerations and strategies

2:15

## The Borrower's Perspective: Insights From the Plaintiffs' Bar and Consumer Advocates

**Cathleen M. Combs**  
Edelman, Combs,  
Lattuner & Goodwin, LLC



**Morgan Williams**  
General Counsel  
National Fair Housing  
Alliance

**Rafey S. Balabanian**  
Edelson PC



**Moderator:**  
**Hunter R. Eley**  
Doll Amir & Eley LLP

In this session, you will hear from leading plaintiffs' attorneys and consumer advocates on claims and settlement trends, where cases are headed in the coming months, and how lenders and servicers can work with borrowers to minimize the need for litigation. You will obtain key insights into the types of actions plaintiffs' counsel are focusing on now and how to prepare for and respond to new and innovative claims, as well as how consumer advocates view the current consumer finance landscape.

3:30 / Conference Ends

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# CONSUMER FINANCE CLASS ACTIONS & LITIGATION



**July 28 – 29, 2016**

**The Omni Chicago Hotel on the Magnificent Mile  
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26<sup>TH</sup> NATIONAL CONFERENCE ON

# CONSUMER FINANCE CLASS ACTIONS & LITIGATION

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